

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-50

PROCEDURAL HISTORY

On June 12, 2017, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Marysville School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On June 13, 2017, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On July 5, 2017, OSPI received the District's response to the complaint and forwarded it to the Parent on July 6, 2017. OSPI invited the Parent to reply with any information he had that was inconsistent with the District's information.

On July 20, 2017, OSPI received the Parent's reply and forwarded that reply to the District on July 20, 2017.

On August 7, 2017, OSPI requested additional information from the District, and the District provided the requested information on August 7 and 8, 2017. OSPI forwarded the information to the Parent on August 7 and 8, 2017.

OSPI considered all of the information provided by the Parent and the District as part of its investigation.

OVERVIEW

During the 2015-2016 school year, the Student attended a District high school. The Student's October 2015 individualized education program (IEP) provided for specially designed instruction in math, reading, writing, and social cognition in a special education setting, and stated that the Student participated part-time in a special education program for students with autism, and also attended four general education classes. At the end of the 2015-2016 school year, the District decided to discontinue the autism program. At the beginning of the 2016-2017 school year, the Student was scheduled to take four general education classes at the high school and three general education classes at a local skills center. The Student's general education English and general education Geometry class were co-taught by a general education teacher and a special education teacher. On September 30, 2016, the IEP team developed a new IEP for the Student, which stated that the Student would receive all of his specially designed instruction in a general education setting, and provided for multiple accommodations. Throughout the school year, the Parent expressed concern that the Student was not keeping up with his classwork and that the Student was not receiving the accommodations in his IEP.

The Parent alleged that the District failed to follow procedures for determining/changing the Student's placement for the 2016-2017 school year. The Parent also alleged that the District failed to implement the Student's IEP during the 2016-2017 school year. The District denied the allegations.

SCOPE OF INVESTIGATION

This decision references events which occurred prior to the investigation time period, which began on June 13, 2016. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation time period.

ISSUES

1. Did the District follow procedures for determining/changing the Student's placement for the 2016-2017 school year?
2. Did the District follow procedures for implementing the Student's individualized education program (IEP) during the 2016-2017 school year?

LEGAL STANDARDS

Changes in Placement: The performance and skill levels of students with disabilities frequently vary, and students, accordingly, must be allowed to change from assigned classes and programs. However, a school may not make a significant change in a student with disabilities placement without a reevaluation. *Student Placement in Elementary and Secondary Schools and Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act* (Office for Civil Rights, August 2010). In determining whether a change in placement has occurred, the district responsible for educating a student eligible for special education must determine whether the proposed change would substantially or materially alter the student's educational program. In making this determination, the following factors must be considered: whether the educational program in the student's IEP has been revised; whether the student will be educated with nondisabled children to the same extent; whether the student will have the same opportunities to participate in nonacademic and extracurricular activities; and, whether the new placement option is the same option on the continuum of alternative placements. If a substantial or material change in the student's educational program has occurred, then the school district must provide prior written notice. *Letter to Fisher*, 21 IDELR 992 (OSEP, July 6, 1994).

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction who is eligible to receive special education services. 34 CFR § 300.323(a); WAC 392-172A-03105(1). A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The initial IEP must be implemented as soon as possible after it

is developed. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105.

Specially Designed Instruction: Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction: to address the unique needs of the student that result from the student's disability; and to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students. 34 CFR §300.39; WAC 392-172A-01175.

FINDINGS OF FACT

Background Facts

1. The Student's parents are divorced and both parents have educational decision making authority for the Student.¹ The Student's father (Parent) filed this complaint.
2. On October 23, 2014, the District completed a reevaluation of the Student. The evaluation report recommended that the Student receive specially designed instruction in the following areas:
 - Reading – fluency and background knowledge
 - Writing – fluency, conventions, mechanics, and theme development
 - Math – basic math operations and pre-algebra concepts
 - Social Cognition – emotional self-regulation and social interaction with peers

2015-2016 School Year

3. During the 2015-2016 school year, the Student attended a District high school and was eligible to receive special education services under the category of other health impairment due to his diagnosis of attention deficit hyperactivity disorder (ADHD) and Asperger's syndrome.
4. The Student's educational placement during the 2015-2016 school year was a part-time District program for students with autism and part-time participation in general education classes.
5. In October 2015, the Student's individualized education program (IEP) team developed the Student's annual IEP. The October 2015 IEP included annual goals in the areas of social cognition, reading, writing, math, and post-secondary transition. The IEP provided for the following specially designed instruction in a *special education setting*:

¹ The Parent provided a copy of a parenting plan, which states that both parents have educational decision making authority. According to the District's response to this complaint, the Student's mother provided the District with a copy of a parenting plan, stating that she was the custodial parent. The District's documentation includes one page from that parenting plan, which does not address educational decision making authority, which is different than custody.

- Math – 55 minutes 5 times weekly
- Reading – 25 minutes 5 times weekly
- Writing – 30 minutes 5 times weekly
- Social Cognition – 55 minutes 5 times weekly

The IEP stated that the Student had “transitioned well” from having one general education class during the 2014-2015 school year, to participating in four general education classes during the 2015-2016 school year with support from special education staff as needed. The Student’s IEP also provided for the following accommodations:

- Use of word processor/computer - when needed
- Student allowed to wear street clothes during PE – daily in PE class
- Allowed to go to quieter area for assessments – when needed
- Extra time if Student effort is shown – daily
- Reduce length of assignments and still receive credit for work completed – daily
- Provide a copy of the notes/study guides – as needed
- Separate testing location – quieter environment – when needed

6. The Student’s class schedule for the 2014-2015 school year included:

First Semester

- Art (general education)
- Computer Graphics (general education)
- Literacy (special education)
- Social Skills (special education)
- Algebra 1A (general education)
- Naval Science (general education)

Second Semester

- Ceramics (general education)
- Literacy (special education)
- Social Skills (special education)
- Algebra 1B (general education)
- Naval Science (general education)
- Teacher’s Assistant (general education)

7. The Student’s general education Algebra class was co-taught by a general education math teacher and a special education math teacher (Student’s IEP case manager).

8. On June 2, 2016, the Parent emailed the high school principal, stating that it had come to his attention that the high school’s autism program had been canceled for the 2016-2017 school year. The Parent stated that he had yet to receive an official announcement from the District or the high school staff. The Parent stated that he wanted to know if the autism program would be canceled, and if so, how this would impact the Student and his classmates. The Parent then sent a follow up email on June 8, 2016, asking that he receive a response.

9. On June 8, 2016, the principal responded to the Parent’s emails, apologizing for not responding sooner. The principal stated that she had spoken with the Student’s IEP case manager, who had relayed that she had contacted all of the students in the autism program and their parents. The principal said that she had also spoken with the students. Additionally, the principal stated that as a result of the Parent’s email, she had spoken with the District’s special education director and believed that a letter was being drafted explaining the special education program for the 2016-2017 school year. The principal said that she would provide the Parent with a copy of the

letter before the end of the 2015-2016 school year.² The principal stated that she was working with the case manager to ensure all of the students felt comfortable and their needs were met, and also stated that school staff would make sure the students were supported academically.

10. In response, the Parent stated that he had not been contacted by the case manager, so he only knew what he had been told. The Parent said that he had received some information from the Student's mother about an upcoming meeting, but had not received an official word whether the autism program was ending. The Parent asked if there was going to be a special education program, and if the Student would still be on an IEP. The Parent stated that he thought the Student no longer needed to be in the autism program, but wanted him to attend general education classes and still have an IEP. The Parent stated that he was concerned about other students that still needed the autism program.
11. On June 12, 2016, the Student's mother emailed the District executive director of special education regarding the autism program. The Student's mother asked that the program continue for another two years. In response, the executive director stated that he had spoken with the Student's case manager on June 11, 2016 to make sure the case manager was able to share the most up to date information with parents. The executive director stated that there were no "forced" changes to the autism program and no reduction in teachers. The executive director said that the only change was to no longer refer to the program as an autism program, because parents and staff were hearing that every student with autism had to be in that program, which was causing confusion. The executive director also stated that class scheduling was already occurring for the 2016-2017 school year and that "class and group consistency is remaining."
12. The District's 2015-2016 school year ended on June 20, 2016.
13. The Student's grades for the second semester of the 2015-2016 school year were as follows:
 - Ceramics (general education): C
 - Literacy (special education): D
 - Social Skills (special education): B-
 - Algebra 1B (general education): C
 - Naval Science (general education): A-
 - Teacher's Assistant (general education): Satisfactory

2016-2017 School Year

14. The District's 2016-2017 school year began on September 7, 2016. At that time, the Student continued to attend the District high school and his October 2015 IEP was in place.

² The documentation in this complaint does not include a letter regarding the autism program.

15. The Student's class schedule at the beginning of the first semester of the 2016-2017 school year was as follows:
- Period 0: Naval Science (general education)
 - Period 1: English (general education)
 - Period 2: History (general education)
 - Period 3: Geometry (general education)
 - Periods 4-6: Skills Center – Aerospace (general education)
16. During the 2016-2017 school year, the Student's general education English class was co-taught by a general education English teacher and a special education English teacher. The Student's general education Geometry class was co-taught by a general education math teacher and a special education math teacher.
17. On September 21, 2016, the Student's case manager emailed the Parent and the Student's mother, stating that the Student's annual IEP was due on September 30, 2016 and asked if the parents could meet on September 30 for the IEP meeting. The parents later agreed to the meeting.
18. Also on September 21, 2016, the Student's IEP case manager emailed the Student's general education and special education English teachers, stating that the Student was assigned to her case load. The case manager stated that the Student had always struggled with reading and writing and the case manager asked that the teachers help the Student. The case manager said that she would send the teachers a copy of the Student's "IEP at a Glance" that weekend, and asked that they "keep an eye" on the Student.
19. Also on September 21, 2016, the Parent emailed the Student's general education English teacher, stating that the Student was struggling in English class. The Parent stated that he was sure the teacher was aware the Student had an IEP and that this was his first year being "mainstreamed" for all of his classes. The Parent said that the Student's IEP gave him allowances that he needed to be successful in school, such as extra time on classwork, and also asked what could be done to help the Student be successful in the English class. The Parent stated that the parents were always happy to help the Student with his schoolwork, and asked that the teacher let him know how the parents could work with the staff to best assist the Student.
20. On September 22, 2016, the Student's general education English teacher responded to the Parent's email, stating that fortunately the Student had two teachers in the English class. The general education teacher also stated that she was informed that morning about the Student's IEP, and that she was sure she would receive a copy of it soon. The general education teacher said that she and the special education English teacher were always "here to help" the students and greatly appreciated the help students received at home. The general education teacher also stated that the "biggest thing" the teachers needed from the Student was for him to ask/speak up when he needed help, as he was in a large class with thirty-six students, and even with two teachers, it was difficult to get to all the students. The teacher then provided information about a peer tutoring program.

21. The Parent replied, thanking the teacher for the information, and stating that he suspected the Student's teachers were not aware that he had an IEP, which is why the Parent had spoken up. The Parent stated that the family was "excited" about the 2016-2017 school year, and stated that with the Student being in all general education classes and participating in the skills center, they anticipated the Student would grow and mature into the young man they all knew he had the potential to be. The Parent stated that the Student just needed a little help and wanted to make sure the help was available. Additionally, the Parent stated that the Student had relayed he was often tired in his English class, and asked if the Student could be allowed to eat a snack prior to the English class to "give him a boost". The general education teacher responded that it was fine for the Student to eat a snack in the English class.
22. On September 23, 2016, the Student's IEP case manager emailed the Student's English teachers, naval science teachers, and history teacher, and also included a math teacher at the high school.³ The case manager attached a copy of the Student's "IEP at a Glance" sheet, and asked that the teachers let her know if she could do anything to assist them. The "IEP at a Glance" sheet included a list of the Student's special education services, his annual goals, and his classroom and testing accommodations.
23. On September 30, 2016, the Student's IEP team, including the Parent, met to develop the Student's annual IEP. The adverse impact summary in the September 30, 2016 IEP stated that the Student had received a private evaluation in June 2016 which "substantiated and supported" his diagnosis of Asperger's syndrome. The present levels of performance in the area of cognitive also stated that the Student had received a private evaluation and then listed the recommendations from the Student's private evaluation, which included the following accommodations:
- Seat the Student near the front of the classroom, close to the teacher.
 - Seat the Student away from the windows, doors or other areas that could potentially be a distraction.
 - If group time proves to be a struggle, provide the Student with a chair behind, but near the group, so as to engage participation.
 - Ask the Student to provide eye contact when providing instructions and request that he repeat back what he has heard.
 - Less is more: provide succinct and clear instructions; provide visual cues for the Student to reference as necessary.
 - In terms of academics, start at the current level in which the Student is performing and gradually progress to more difficult tasks only once he has mastered the current level; mastery is key.
 - Provide the Student with one-on-one attention as necessary. Small group instruction is preferable to larger group instruction.
 - Provide assistance with organization and planning.
 - Break assignments into small steps, with regular monitoring.

³ The District's documentation in this complaint does not show that the math teacher addressed in the email was the Student's math teacher at anytime during the 2016-2017 school year. It is unclear from the documentation why the math teacher was included on the email.

- Provide the student with ample notice when routines or schedules in school will be changing as the result of activities such as assemblies, field trips, special activities, and drilled.
- Special attention and notice should be given when activities with loud noises will be occurring, such as fire drills.
- Allow extra time for transitions.
- Allow the Student alternatives for school projects, so he is able to utilize his areas of interest.
- Provide the Student with a quiet place where he can regularly go to calm himself down if needed.
- Allow the Student to remove himself from frustrating situations and have him meet with the school counselor if necessary.
- Offer alternative activities when participating in high sensory activities.
- Allow the use of a fidget toy, such a stress ball, soft stone, or small token of comfort.
- It is imperative to provide the Student with social opportunities to focus on increasing social awareness and initiating social interactions with his typically developing peers.

The present levels of performance in the area of “social/emotional” stated that the Student “seems fine socially and emotionally. He enjoys his classmates.” The present levels of performance in the area of “academics” included test scores from the Student’s October 2014 reevaluation, but did not include any other information about the Student’s level of performance in math, reading, or writing. Under the section titled, “age appropriate transition assessment”, the IEP stated that the Student needed support in written work and completing assignments, and that the Student’s lack of writing, including penmanship and “substance”, may hinder him in future jobs and careers. The September 2016 IEP included annual goals in the areas of behavior⁴, social cognition, reading, writing, math, and post-secondary transition. The behavior goal stated:

When given an assignment involving written work the Student will complete the written work in a timely [manner] improving his effort in classes and his ability to keep up with the assignments and tasks at hand from 2 out of 5 times to 4 out of 5 times as measured by general education and [special education] staff observations and weekly grade checks.

The reading goal stated:

When given technical reading at a 10th grade level the Student will be able to sound out and comprehend the words improving reading comprehension from a grade level of 9.0 to a grade level of 10.0 as measured by observation and assessments given at the [skills center].

The IEP provided for the following specially designed instruction in a *general education setting*:

- Math – 55 minutes 5 times weekly (provided by general/special education staff)
- Reading – 20 minutes 5 times weekly (provided by general/special education staff)

⁴ It is unclear from the documentation in this complaint why the Student’s September 2016 IEP included an annual goal in the area of behavior as his October 2014 evaluation report did not recommend specially designed instruction in the area of behavior, and the September 2016 IEP did not provide for specially designed instruction to address the behavior goal.

- Writing – 35 minutes 5 times weekly (provided by general/special education staff)
- Social Cognition – 55 minutes 5 times weekly (provided by general/special education staff)

The IEP stated that the Student's placement was a full-time general education setting with support from special education staff. The IEP also provided for the following accommodations in "all classes":

- Access to resource room - as needed
- Adult proximity - as needed
- Allow oral responses – when allowed by teacher
- Alternative grading – as requested
- Break material into chunks – as needed
- Check for understanding – as needed
- Extra time to respond – as needed
- Noise buffer – as needed
- Preferential seating – as needed
- Present information auditorily – as needed
- Present information visually – as needed
- Reduce length of assignments – as needed
- Reinforcement – as needed
- Repeat directions – as needed
- Using Separate space as needed
- Word Processor – as needed

24. Also on September 30, 2016, the District issued prior written notice, proposing to continue the Student's IEP. The notice stated that the "action was based on [a] review of existing data, latest 3 year reevaluation dated 10/23/2014, and consultation with the IEP team, including parents, student, SPED and General Ed teachers, and administrators."

25. Also on September 30, 2016, the Student's IEP case manager emailed the Student's assigned school counselor, stating that the IEP team had met that day and the parents had agreed to change the Student's class schedule as follows:

- 2nd Period History → 2nd Period Geometry (co-taught class)
- 3rd Period Geometry → 3rd Period History

In response, the counselor stated that she was not in the office that day, but did not think there was a co-taught Geometry class offered during 2nd period.

26. On October 2, 2016, the Parent emailed the high school principal, stating that he had received a call from the Student's case manager, stating that the high school could not accommodate the Student's IEP for both Geometry and English. The Parent stated that he was confused as this was discussed with the Student's general education English teacher at both the September 30 IEP meeting and at an open house, and both times she stated that she had a teaching assistant during the Student's English class. The Parent stated that the Student had already fallen behind that school year because his teachers were not aware of his IEP, and now the plan put in place at the September 30 IEP meeting was no longer an option. The

Parent asked that the principal verify if this was no longer an option, and what plan the District was going to put into place to accommodate the Student's IEP. Additionally, the Parent stated that he was "very upset" about how the school year had started out for the Student. The Parent said that when the District made the announcement that the autism program was being discontinued, the parents were assured the Student's IEP would still be in place and that he would receive assistance. However, it was now a month into the school year and the Student still had not received the assistance required by his IEP. The Parent stated that he had not received "due process" regarding the changes to the Student's IEP. The Parent proposed meeting to discuss the issue.

27. Also on October 2, 2016, the Student's IEP case manager responded to the Parent's email.⁵ The case manager said that as she had previously stated, the Student's participation in the skills center aerospace program in the afternoons limited his other class options. The case manager stated that the high school offered a co-taught English class 1st period (Student's English class) and a co-taught Geometry class 1st period, and as far as she knew, did not offer a co-taught Geometry class 2nd period. The case manager would look into this the next day. The case manager also stated that in her opinion, the Student required more assistance in English than he did in math, and that she had taken the Student "under her wing" during 3rd period Geometry class to help him as much as she could. The case manager further stated that she was glad the Parent was bringing the matter to the principal's attention, and that the high school's schedule was not conducive to all students.
28. On October 3, 2016, the high school principal responded to the Parent's October 2 email. The principal stated that she had made the changes to the Student's schedule that were agreed upon at the September 30 IEP meeting for the Student to receive support.
29. As of October 3, 2016, the Student's class schedule for the first semester of the 2016-2017 school year was as follows:
 - Period 0: Naval Science (general education)
 - Period 1: Geometry (general education)
 - Period 2: English (general education)
 - Period 3: History (general education)
 - Periods 4-6: Skills Center – Aerospace (general education)
30. The Student's English class continued to be co-taught by a general education and special education teacher. The Student's Geometry class continued to be co-taught by a general education teacher and a special education teacher.
31. Based on the Student's attendance record, he was absent October 3-6, 2016, due to illness.

⁵ Based on the documentation in this complaint, it appears the IEP case manager was copied on the Parent's October 2 email to the high school principal.

32. On October 7, 2016, the Student's IEP case manager emailed his English, Geometry, and history teacher, and the Student's assigned school counselor, stating that the Student was absent that week due to illness. The case manager asked that the teachers allow the Student extra time to complete his assignments. The case manager said that the Student was eligible for special education and required specially designed instruction in the areas of math, reading, writing, and social cognition.
33. On October 10, 2016, the Student's assigned school counselor responded to the case manager's email, stating that she had spoken with the Student that morning and he had indicated that prior to his absence, "he was feeling overwhelmed with the big picture of work." The counselor stated that she knew all of the teachers were helping the Student "immensely", but asked if they could help him "identify smaller increments of work to build up to the bigger picture that might be helpful to him." The counselor said that she had also spoken with the Student about giving his best effort and talking to someone if he was beginning to feel overwhelmed.
34. Also on October 10, 2016, the Student's general education English teacher emailed the Parent, providing information about what occurred that day in the English class. During the English class, the teacher had begun reading a new story to the class, pausing at times to give the students a few minutes to jot down questions they had about the text and highlight/annotate important information about setting and characters and any connections they were making. The teacher also had the students write down what other students said to help the students see the types of things they could be noting. The general education teacher stated that during class, she had noticed the Student was not participating in the activity, so she had pointed out what he could highlight, but the Student had still not engaged. The general education teacher stated that she was unsure if the Student was feeling lost due to being gone the previous week, or as "we experienced prior to his absence of not engaging with the text." In response, the Parent forwarded the email to the Student's mother. The Student's mother later replied that she had asked the Student about the story and that he had described the story to her. The mother then stated that the Student had Asperger's syndrome, and that one of the traits was that children did not appear to be paying attention, but they were. The mother stated that the Student was listening to the teacher read.
35. On October 20, 2016, the Parent emailed the Student's general education Geometry and special education Geometry teacher, stating that he was under the impression that the Student did not need to make up the assignments he missed when he was absent from school earlier that month. The Parent asked that the teachers confirm if this was true. The Parent also asked if the special education Geometry teacher was working with the Student to help him complete another missing assignment. In response, the special education Geometry teacher stated that she only saw the Student during geometry class and was not able to work with the Student to make up missing assignments, as she worked with students on what the class was currently working on. The special education teacher stated that there was not time in class for students to make up work from absences, and that the make-up work

needed to be completed at home. The special education teacher stated that the general education Geometry teacher had given the Student the assignments he missed with the intention that the Student would complete them, and that she had given the Student's case manager some of the missed work to provide to the Student during the week he was sick. The special education teacher stated that the Student could come in before or after school to receive help on the missing assignments.

36. On November 29, 2016, the Parent emailed the Student's general education English teacher, asking why the Student received a score of "72" on his last book report. The Parent stated that all he could figure out from the information provided by the teacher was that the Student's presentation slides were out of order and he did not wear a dress shirt. The Parent stated that the Student's slides appeared to be in order and that the Student had to wear his uniform shirt that day for his naval science class. The Parent also stated that the Student had received an "F" grade for his non-fiction book choice, and asked why the book did not count as a non-fiction choice. The Parent said he was trying his best to help the Student be successful and was also paying for a tutor to help the Student. The Parent stated that the Student needed to get his grades up to be able to continue to participate in the naval science class and the aerospace program at the skills center.

37. In response, the general education English teacher stated that the Student had been marked down on the book report presentation because he did not include any annotations from the book, which students had been reminded about daily. The general education teacher also stated the Student had told the special education English teacher that he had a dress shirt to wear for the presentation, but had instead worn a sweatshirt. The general education teacher said that the Student's non-fiction book was an appropriate choice, and that there had been a mistake in the online gradebook, which was now corrected. Additionally, the teacher stated that staff had reviewed the Student's essay assignment yesterday, and the Student had not followed the requirements, even with an accommodation of shortening the requirements from five paragraphs to two. The general education teacher stated that she and the special education teacher were happy to help the Student, but he did not come to class prepared with his laptop charged in order to complete, participate, and engage in assignments. The teacher stated that the Student needed to put forth effort, so the staff had something to help him with. When the Student did not work in class, the staff could not see what he needed assistance with.

38. The District was on break December 21, 2016 through January 3, 2017.

39. The District's first semester ended on January 31, 2017. The Student's grades for the first semester were as follows:

- Naval Science: A
- Geometry: D
- English: F
- History: F

- Skills Center – Aerospace: A-

40. The District's second semester began on February 1, 2017. The Student's class schedule for the second semester was as follows:

- Period 0: Naval Science (general education)
- Period 1: Geometry (general education) (co-taught)
- Period 2: English (general education) (co-taught)
- Period 3: History (general education)
- Periods 4-6: Skills Center – Aerospace (general education)
- Period 8: Advisory (general education)

41. On February 10, 2017, the District issued progress reporting toward the Student's annual goals, which was completed by his IEP case manager. The progress reporting stated:

- Social Cognition Goal (improving social emotional skills and peer relationships) – sufficient progress being made to achieve annual goal within the duration of the IEP. The Student is making progress in getting along with others.
- Writing Goal (improving quality of content, organization, and style) – insufficient progress demonstrated to meet this annual goal and may not achieve annual goal within the duration of the IEP. The Student has put forth very little effort in his writing as reported by all teachers.
- Writing Goal (improving penmanship and spacing) – insufficient progress demonstrated to meet this annual goal and may not achieve annual goal within the duration of the IEP. The Student has put forth very little effort in his writing as reported by all teachers.
- Reading Goal (improving reading comprehension) – mastered this annual goal. The Student has improved a great deal in reading comprehension. We can discuss removing this goal at his next IEP meeting.
- Math Goal (apply geometric concepts) – emerging skills demonstrated but may not achieve annual goal within duration of IEP. Student does not complete or turn in homework.
- Behavior Goal (completing written work in a timely manner) – insufficient progress demonstrated to meet this annual goal and may not achieve annual goal within the duration of the IEP. The Student has put forth very little effort in his writing as reported by all teachers.

42. Based on the Student's attendance record, the Student was absent March 16, 17, and 20, 2017 due to illness.

43. On March 20, 2017, the Parent emailed the Student's history teacher, asking that the teacher send him the assignments the Student missed while he was sick. The Parent stated that he wanted the Student to stay on top of his schoolwork, and also asked for information about what other assignments the Student was missing. In response, the history teacher provided the Parent with a list of the assignments the Student had missed while he was sick.

44. On May 11, 2017, the Student's IEP case manager emailed the Parent regarding the Student's schedule for the upcoming 2017-2018 school year. The case manager stated that the Student would need to meet with his assigned school counselor to

discuss the schedule. The case manager also stated that she was concerned about the Student's grades and about him passing his classes. The case manager said the Student needed history and Geometry credits to graduate.

45. In response, the Parent stated that he was concerned about the Student's ability to keep up with the amount of homework in his Geometry class. The Parent said that all year, the Student had been unable to keep up with the amount of homework and that per his IEP, he had accommodations in this area. The Parent asked why the Student received scores of "0" when he clearly did not have the ability to maintain the amount of Geometry homework along with the work in his other classes. The Parent stated that the Student's grade in geometry would be higher if his IEP was followed and his missing assignments "were marked no count." Additionally, the Parent stated that the Student had achieved a lot that school year, and stated "this time last year, he barely wrote a 5 sentence paragraph. Yesterday, he completed a 2 page essay" for his skills center class. The Parent stated that he wanted to see the Student's effort reflected in his grades, and asked that the case manager help the Student by reminding his teachers about his IEP.
46. The case manager replied that all of the Student's teachers were following the accommodations outlined in the Student's IEP, and that per his teachers, the Student did not work in class. The case manager stated that the Student was given ample time, and displayed minimal effort in class.
47. The Parent responded that he had received emails from the Student's English teacher, stating that the Student had shown effort and his weekly points were A's and B's. The Parent stated that the Student did not always understand his Geometry lessons until his sessions with his tutor after school. The Student then turned in the assignments, which were marked A's and B's. The Parent said that he had also seen the history assignments the Student was working on. Additionally, the Parent stated that the Student's IEP was not being followed in terms of marking assignments "no count" when the Student could not keep up with the amount of work, which was "very clearly" shown in the gradebook. The Parent stated he and the Student wanted the Student's IEP followed, as the Student was upset that he could not keep up with the volume of homework. The Parent also stated that the Student had discussed this "extensively" with the school counselor. The Parent said that he wanted the issue resolved quickly.
48. On May 12, 2017, the Student's IEP case manager emailed the Parent, proposing a class schedule for the Student. The case manager stated that the schedule would keep the Student on track to graduate on time, and also took into account his present grades. The case manager stated that assuming the Student did not pass his Geometry or history class, the proposed schedule was:
 - Summer School – Geometry and history
 - 2017/2018 School Year: Naval Science – zero hour, history/elective, world history/world geography, modified English class

The Parent responded that he had spoken with the Student about his schedule, and the Student planned to make an appointment with the school counselor to discuss his schedule for the 2017-2018 school year. The Parent stated that it was important to remember that the Student's aerospace courses at the skills center counted for credits in math, science, and English, and that based the Student's needs, it looked like he would need to take World History or Geography and two electives of his choice. The Parent also stated that the Student really wanted to remain at the skills center in the afternoon, and was excelling under the teaching style. Additionally, the Parent stated that the family planned for the Student to take summer school for history, and that once the Student received accommodations in his Geometry class, he would pass the course.

49. The documentation in this complaint included an undated email from the Student's special education English teacher addressed to the Parent and the Student's mother. The email appears to have been sent during the week of June 5-9, 2017. The special education English teacher stated that she co-taught the Student's English class and was the special education department head at the high school. The teacher said that it had been brought to her attention that the Student wanted a change in IEP case managers. The teacher stated that it was best that the Student stay with his current case manager for the remaining eight days of the school year, as the current case manager was best able to monitor the Student's progress for the remainder of the school year.
50. On June 7, 2017, the Parent emailed the Student's English teachers, stating that the family had been working hard to make sure the Student had all of his work turned in, but he had noted that everything he had turned in lately was marked with an "F". The Parent asked if the assignments had been graded, and stated that the Student should still get credit for late work per his IEP. The Parent stated that the Student had really struggled with the volume of work he had that school year. The Parent said that the Student's work load the last two school years was less than half what it was this school year, and the Student had barely passed with "D" grades. The Parent stated, "how anyone thought he would pass having to do a full workload is beyond me". The Parent asked if the Student would pass the English course and what course of action he needed to take.
51. In response, the general education English teacher stated that she had gone through the gradebook and documented all of the Student's scores of zero, and also reviewed the Student's history of submitting assignments electronically. The teacher stated that only 1 out of 10 assignments was turned in late. The teacher said that the Student did get extended time on assignments, if he was using his class time wisely, and if he communicated the need for extra time prior to the due date, not weeks after. The teacher stated that unfortunately, neither had occurred. The teacher said that at that time, the Student was not passing the English class, but there were still nine days left with some assignments to be completed. The Student had received the assignments that day.

52. On June 11, 2017, the Parent replied to the English teacher's email, stating that the Student's IEP stated that he was supposed to have a lighter work load than the "regular" students, and asked if this had been taken into account. The Parent stated that he also did not believe that the Student's IEP specified a time limit for how late an assignment could be turned in. Additionally, the Parent said that the Student had turned in several assignments and hopefully when they were graded, his grade would go up.

53. On June 12, 2017, the Parent filed this citizen complaint.

54. On June 14, 2017, the District issued progress reporting toward the Student's annual goals. The progress reporting stated:

- Social Cognition Goal (improving social emotional skills and peer relationships) – mastered this annual goal. The Student is thriving with relationships at the skills center.
- Writing Goal (improving quality of content, organization, and style) – insufficient progress demonstrated to meet this annual goal and may not achieve annual goal within the duration of the IEP. The Student has put forth very little effort in his writing as reported by all teachers. This is an area of concern.
- Writing Goal (improving penmanship and spacing) – insufficient progress demonstrated to meet this annual goal and may not achieve annual goal within the duration of the IEP. The Student has put forth very little effort in his writing as reported by all teachers. This is an area of concern.
- Reading Goal (improving reading comprehension) – mastered this annual goal in February 2017.
- Math Goal (apply geometric concepts) – insufficient progress demonstrated to meet this annual goal and may not achieve annual goal within the duration of the IEP. The Student has put forth very little effort in his classes as reported by all teachers. This is an area of concern.
- Behavior Goal (completing written work in a timely manner) – insufficient progress demonstrated to meet this annual goal and may not achieve annual goal within the duration of the IEP. The Student has put forth very little effort in classes at the high school as reported by all teachers. This is an area of concern.

55. The District's 2016-2017 school year ended on June 20, 2017. At the end of the school year, the Student transferred to another Washington school district.

56. The Student's grades for the second semester were as follows:

- Naval Science: C
- Geometry: F
- English: F
- History: F
- Skills Center – Aerospace: A
- Advisory: Pass

CONCLUSIONS

Issue 1: Procedures for determining/changing the Student's placement for the 2016-2017 school year – A school district may not make a significant change in a

student's placement without a reevaluation. In determining whether a change in placement has occurred, the district must determine whether the proposed change would substantially or materially alter the student's educational program. In making this determination, the following factors must be considered: whether the educational program in the student's IEP has been revised; whether the student will be educated with nondisabled children to the same extent; whether the student will have the same opportunities to participate in nonacademic and extracurricular activities; and, whether the new placement option is the same option on the continuum of alternative placements. If a substantial or material change in the student's educational program has occurred, then the school district must provide prior written notice.

Here the Student's October 2015 IEP was in place at the beginning of the 2016-2017 school year and provided for 825 minutes per week of specially designed instruction in a *special education setting*. However, the Student's class schedule for the first semester of the 2016-2017 school year shows that he was not enrolled in any special education classes. On September 30, 2016, the Student's IEP team developed his annual IEP, which provided for 825 minutes of special education in a *general education setting*. Moving the Student from a part-time special education placement to a full-time general education placement was a significant change in the Student's placement and required the District to first conduct a reevaluation; however, the District did not conduct a reevaluation. Additionally, the District failed to provide prior written notice discussing the reasons why the District was changing the Student's placement so that he would no longer participate in special education classes. The District failed to follow procedures for changing the Student's placement.

Issue 2: IEP Implementation – A school district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation.

October 2015 IEP: The Student's October 2015 was in place on September 7, 2016, when the District's 2016-2017 school year began. However, the District's documentation shows that the Student's general education teachers and his special education English teacher were not provided information about the Student's October 2015 IEP until September 23, 2016. This is particularly concerning given the Student's general education English teacher, special education English teacher, and his general education Geometry teacher were responsible for providing the Student with some of the specially designed instruction stated in his October 2015 IEP, and that all of the Student's teachers were responsible for providing the Student with the accommodations required by his IEP. Additionally, the District's documentation does not substantiate that the Student was enrolled appropriately to support his IEP placement, goals, and services.

September 30, 2016 IEP –

Social Cognition Services: The Student's September 30, 2016 IEP provided for 275 minutes per week of specially designed instruction in the area of social cognition. While

it is unclear from the District's documentation in this complaint when this instruction was provided, the Student's progress reporting shows that the Student made progress toward his social cognition goal throughout the school year, and had mastered the goal by June 2016.

Behavior Services: The Student's September 2016 also included an annual goal in the area of behavior, which addressed work completion in a timely manner. However, behavior was not an area of service recommended in the Student's most recent October 2014 evaluation report and the September 2016 IEP did not provide for specially designed instruction in the area of behavior. If the District believed that the Student was in need of specially designed instruction to address issues with work completion, the District should have conducted a reevaluation of the Student to assess this need, and then added the area of service to his IEP. It is also noted that the Student's progress reporting shows he made no progress toward his behavior goal during the 2016-2017 school year, and that the Student's IEP team took no steps to address the lack of progress toward the goal. The District failed to provide specially designed instruction to address the Student's behavior goal.

Math and Writing Services: The September 2016 IEP provided for 275 minutes per week of specially designed instruction in math and 175 minutes per week of specially designed instruction in writing. Based on the Student's class schedule for the 2016-2017 school year, the Student was to receive his specially designed instruction in writing in his co-taught general education English class and his specially designed instruction in math in his co-taught general education Geometry class. As discussed above, the Student's general education math and English teacher, and his special education English teacher did not have a copy of the Student's IEP until three weeks into the school year, resulting in a failure to provide specially designed instruction. The Student's general education English teacher then stated that even with two teachers in the class, they could not always get to all thirty-six students. While it is possible the Student received some specially designed instruction in his Geometry and English class, this is not reflected in the documentation the District provided in this complaint. Taking into consideration that the Student failed the Geometry and English class, that he made little to no progress toward his math and writing goals during the school year, and that the District failed to hold any IEP meetings to address the Student's significant lack of progress, OSPI concludes that the District has failed to substantiate that it provided the Student with specially designed instruction in writing and math. The District will provide the Student with compensatory services to address his missed instruction.

From September 7, 2016 through June 12, 2017, when the Parent filed this complaint, there were 175 school days. According to the Student's attendance record, he attended his Geometry and English classes 148 days out of those 175 school days. During those 148 school days, the Student should have received approximately 136 hours of specially designed instruction in math and approximately 86 hours of specially designed instruction in writing. Given the more intensive instruction that can be provided through 1:1 instruction, the District will provide the Student with one-half the amount of time, which is 68 hours of math instruction and 43 hours of writing instruction.

Accommodations: The Parent alleged in his complaint that the Student's teachers failed to reduce the length of his assignments and failed to allow the Student to turn in late work as required by the accommodations in the Student's IEP. Both the Student's October 2015 and September 2016 provided for a reduction in the length of the assignments. While there is some indication that the Student's English teachers reduced some of his assignments, the District has not provided documentation to substantiate that the Student received this accommodation in his other classes. The Student's October 2015 IEP provided for "extra time if student effort is shown", but the Student's September 2016 IEP, which was in place the majority of the 2016-2017 school year, did not include an accommodation, which addressed the Student turning in late work or having extra time to complete assignments. Therefore, the teachers were not required to provide extra time for the Student to complete assignments and/or submit late work. However, given the Parent's confusion about the accommodations and the Student's continual struggle with completing work, the District should have held an IEP meeting to clarify the Student's accommodations and determine if additional accommodations were needed.

CORRECTIVE ACTIONS

By or before **September 8, 2017, September 22, 2017, November 3, 2017, January 12, 2018, March 9, 2018, May 7, 2018, and July 9, 2018**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

By **September 15, 2017**, the District will meet with the Parent and the Student to develop a schedule to provide the Student with a total of 111 hours of compensatory services (68 hours of math services and 43 hours of writing services). The services will be provided outside of the District's regular school day. The services must be provided by a certificated special education teacher, or a certificated teacher under the supervision of a certificated special education teacher. The District can contract with the Student's new school district to provide the services. If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule. The services must be completed no later than June 29, 2018. The District will provide OSPI with documentation of the schedule by **September 22, 2017**.

The District must provide OSPI with documentation by **November 3, 2017, January 12, 2018, March 9, 2018, and May 7, 2018** of the compensatory services provided to the Student. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student. No later than **July 9, 2018**, the District shall provide OSPI with documentation that the compensatory services have been completed.

The District must either provide the transportation necessary for the Student to access these services, or must reimburse the Parent or the Student's mother for the cost of providing transportation for these services. If the District reimburses the Parent or the

Student's mother for transportation, the District must reimburse the parents for round trip mileage at the District's privately owned vehicle rate. The District must provide OSPI with documentation by **July 9, 2018**.

DISTRICT SPECIFIC:

The District will ensure all District special education certificated staff, including educational staff associates (ESAs), principals, and assistant principals at the Student's former high school receive training regarding: 1) procedures for changing a student's placement; 2) developing IEPs; 3) implementing IEPs, including the provision of specially designed instruction and informing staff of their responsibilities for implementation; and, 4) prior written notice. ESAs include school psychologists, physical therapists, occupational therapists, speech language pathologists, school counselors, school nurses, and other service providers. The trainer will not be an employee of the District. The training will also include examples.

- By **September 8, 2017**, the District will provide OSPI with the name of the trainer and documentation that the trainer has been provided a copy of this decision for use in preparing training materials.
- By **September 22, 2017**, the District will submit a draft of the outside trainer's training materials to OSPI for review. OSPI will approve the materials or provide comments by September 29, 2017 and additional dates for review, if needed.
- By **November 3, 2017**, the District will submit documentation that staff participated in the training. This will include 1) a sign-in sheet, and 2) a roster of who should have attended so OSPI can verify that staff participated. If any of the staff are unable to participate, the District will contract with the trainer for a follow-up session(s) within the required timeframe.

The District will submit a completed copy of the Corrective Action Plan (CAP) Matrix documenting the specific actions it has taken to address the violations and will attach any other supporting documents or required information.

RECOMMENDATION

It is recommended that the District consider the Parent's request to revise the Student's grades based on the Student's participation and completion of assignments.

Dated this ____ day of August, 2017

Glenna L. Gallo, M.S., M.B.A.
Assistant Superintendent
Special Education
PO BOX 47200
Olympia, WA 98504-7200

THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

IDEA provides mechanisms for resolution of disputes affecting the rights of special education students. This decision may not be appealed. However, parents (or adult students) and school districts may raise any matter addressed in this decision that pertains to the identification, evaluation, placement, or provision of FAPE to a student in a due process hearing. Decisions issued in due process hearings may be appealed. Statutes of limitations apply to due process hearings. Parties should consult legal counsel for more information about filing a due process hearing. Parents (or adult students) and districts may also use the mediation process to resolve disputes. The state regulations addressing mediation and due process hearings are found at WAC 392-172A-05060 through 05075 (mediation) and WAC 392-172A-05080 through 05125 (due process hearings.)